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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Joint Application of **UNITED AIR LINES, INC.** **and** **DEUTSCHE LUFTHANSA, A.G.** **(LUFTHANSA GERMAN AIRLINES)** **under 49 U.S.C. 41308 and 41309 for approval of and antitrust immunity for an expanded alliance agreement**	**Docket OST 96-1116** -25

ANSWER OF JOINT APPLICANTS TO COMMENTS ON ORDER TO SHOW CAUSE

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DATED: May 20, 1996

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United Air Lines, Inc. ("United"), Deutsche Lufthansa, A.G. ("Lufthansa") and their respective affiliates (collectively, "the Joint Applicants") hereby submit this Answer to the comments on the Department's Order 96-5-12 ("Show Cause Order") submitted by American Airlines ("American") and the International Air Transport Association ("IATA"). Neither American's nor IATA's comments should delay the immediate issuance of a Final Order approving and immunizing the United/Lufthansa Alliance Expansion Agreement. The filing by IATA does, however, suggest the desirability of a clarification with respect to the IATA withdrawal requirements of the Show Cause Order.

American

American's Objections to the Show Cause Order reiterate, in an abbreviated form, the points American has raised twice in previous pleadings in this docket: that the Department should delay approval of the United/Lufthansa application until it has acted on the American/Canadian Airlines International application; and that the Department should require Lufthansa to discontinue "various practices" which American asserts must be responsible for SABRE's allegedly poor performance in Germany. Both of these points have been fully answered by the Joint Applicants in previous responses to American's filings, and were clearly and appropriately rejected by the Department in the Show Cause Order. Order 96-5-12 at 29-30. American still cannot suggest any legal basis whatever for delaying prompt Departmental action on the United/Lufthansa application. Nor does it furnish any evidence that Lufthansa or any entity under Lufthansa's control has engaged in any discriminatory CRS practices in Germany.

Unable to offer credible evidence of any CRS wrongdoing by Lufthansa, American now argues that the Department should hold the German Government itself responsible for "the multiple CRS barriers which have long existed in Germany," and that the Department should hold the United/Lufthansa application hostage until it has obtained assurances that these alleged barriers will be remedied. The only example of such barriers that American offers is the German Government's ownership of the German

railroad, which, while apparently moving ahead on the resolution of technical issues to SABRE's satisfaction, has allegedly failed to accept SABRE's commercial terms and has not yet provided "substantive comments" on a recent SABRE commercial'proposal for the marketing of German Rail services through SABRE. The claim that any of this rises to the level of a "CRS barrier" or "discriminatory behavior" meriting the denial or delay of the Joint Application is patently without merit.

In any event, as the Department correctly noted, there are "other fora more appropriate for addressing these [CRS] concerns." Show Cause Order at 30. This conclusion is all the more appropriate given that SABRE's complaints now focus on the German Government and are entirely unrelated to the actions of Lufthansa, a private company.

IATA

The IATA Response requests that proposed Paragraph 3 of the Show Cause Order be withdrawn and that the issue of tariff coordination involving carriers in antitrust-immunized alliances be addressed instead in Docket 46923 (IATA's application for approval and antitrust immunity for revised provisions for the conduct of traffic conferences). While the Joint Applicants take no position on IATA's requests, they do believe that the IATA Response deserves the Department's serious consideration.

United and Lufthansa emphasize, however, that the issues raised by the IATA Response should not be allowed to delay finalization of the Show Cause Order. For that reason, should

the Department wish to reconsider the IATA issues in another proceeding, United and Lufthansa hereby state that they are willing voluntarily to limit their participation in IATA tariff coordination regarding through fares, rates or charges applicable between the United States, on the one hand, and Germany, the Netherlands, and any other country in Europe whose designated carriers participate in alliances similar to the United/Lufthansa alliance and are subsequently granted antitrust immunity, on the other hand, on the same terms that Northwest and KLM have agreed to limit their participation in IATA tariff coordination in the letter dated May 8, 1996 which has been filed in this docket. Like Northwest and KLM, United and Lufthansa are prepared voluntarily to accept such a limitation so long as all other carriers similarly situated are under a comparable limitation.

If, notwithstanding the IATA Response, the Department decides to finalize Paragraph 3 of the Show Cause Order, the Joint Applicants strongly urge the Department to make clear that the limitation is a requirement that the Department is imposing rather than a "condition" of the immunity being conferred. This clarification could be accomplished by changing the wording of Paragraph 3 to read: "We require [or direct] United Air Lines, Inc. and Deutsche Lufthansa, A.G. d/b/a Lufthansa German Airlines, and their respective affiliates, to withdraw from participation" and so on as in the current tentative version of Paragraph 3.

This form of wording, in which the Department "directs" or "requires" rather than "conditions its grant of approval and immunity", is the form used in the Northwest-KLM Final Order 93-1-11. There the various requirements as to resubmission, reporting, recusal, and prior approval are all imposed by language that "direct[s]" or "require[s]" the applicants to do what the Department wants. None of the requirements is made a "condition" of the grant of antitrust immunity, even though some of these requirements are referred to loosely as "conditions" in the discussion sections of the preceding Order to Show Cause 92-11-27 (see, e.g., id. at 5, 12).[1/]

WHEREFORE, Joint Applicants urge the Department promptly to make final its Order to Show Cause, with the two clarifications as suggested in the instant Answer and in our Comments of May 16, 1996, and to approve the Alliance Expansion Agreement under

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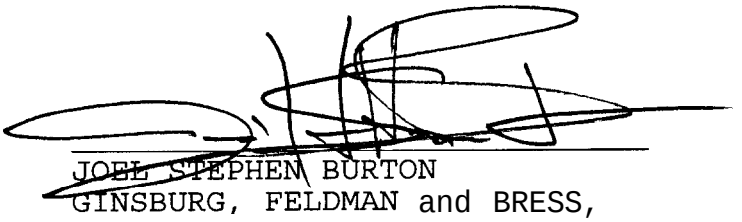
[1/] As a requirement or direction, the limitation on IATA participation by the Joint Applicants would be enforceable by the Department in the same manner as any other requirement the Department imposes on carriers subject to its jurisdiction. If the limitation were a "condition" to immunity, however, private litigants could initiate an antitrust action challenging conduct that the Department has expressly immunized and attempt to have the court set aside the immunity based on an allegation that either United or Lufthansa had not satisfied the condition as interpreted by the plaintiffs. There can be no assurance that the court would exercise its discretion to refer this allegation to the Department for resolution -- with the result that the Department would have ceded, to a court hearing a private lawsuit, its primary jurisdiction over antitrust immunity for international airline alliances.

49 U.S.C. 41309 and exempt United and Lufthansa and their respective affiliates from the antitrust laws pursuant to 49 U.S.C. 41308.



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DATED: May 20, 1996

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Answer of Joint Applicants To Comments On Order To Show Cause on all persons named on the attached service list by causing a copy to be sent via facsimile or hand delivery

Kathryn D. North

DATED: May 20, 1996

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